

Informal Working Paper No. 9/Rev.2
27 August 1974

ORIGINAL: ENGLISH

SECOND COMMITTEE

Formulation of main trends

INTRODUCTION

The sole purpose of this informal working paper is to reflect in generally acceptable formulations the main trends which have emerged from the proposals submitted either to the United Nations Sea-Bed Committee or to the Conference itself.

The fact of including these formulations does not imply any opinion on the degree of support they have commanded either in the preparatory stage or in the proceedings of the current session of the Conference. It does not imply either that all the proposals from which these formulations have been taken have been the subject of discussion. The inclusion of a provision in this paper, whether or not only one formula appears, does not necessarily imply that there are no other opinions concerning these questions or that all or most delegations agree on the necessity for such a provision.

All the proposals submitted to the United Nations Sea-Bed Committee and to the Conference are maintained and may be considered by this Committee at any time. Thus, the preparation of this document and its acceptance by the Committee as a working paper in no way signifies that these proposals have been withdrawn. There is no question of making any decisions at the present stage, in accordance with the method of work adopted by the Committee at its meeting on 3 July, once this task has been carried out, the item will be "frozen" and the Committee will pass on to the next item. No decision has to be taken until all the closely interrelated items have been thoroughly discussed.

Since the purpose of this paper is to focus the discussion of each of the items on the fundamental issues, leaving until later the consideration of supplementary rules and drafting points, the paper does not include all the proposals appearing in volume III of the report of the Sea-Bed Committee or all the variants, many of which reflect only drafting changes, appearing in volume IV of the same report.

It should be noted that other proposals relating to items 9.2.3 and 9.2.4 are under consideration by the First Committee.

Item 9	<u>Land-locked countries</u>
PROVISION I	Definitions
Item 9.1	<u>General principles of the law of the sea concerning the land-locked countries</u>
PROVISION II	General principles
Item 9.2	<u>Rights and interests of land-locked countries</u>
Item 9.2.1	<u>Free access to and from the sea: freedom of transit, means and facilities for transport and communications</u>
PROVISION III	Free access to and from the sea
PROVISION IV	Relation to previous agreements
PROVISION V	Most-favoured-nation clause
PROVISION VI	Freedom of transit
Item 9.2.2	<u>Equality of treatment in the ports of transit States</u>
PROVISION VII	Use of maritime port
PROVISION VIII	Customs duties and other charges
PROVISION IX	Free zone or other facilities
PROVISION X	Appointment of customs officials
PROVISION XI	Transportation, handling and storage of goods in transit
PROVISION XII	Improvement of the means of transport and communications
PROVISION XIII	Delays or difficulties in traffic in transit
Item 9.2.3	<u>Free access to the international sea-bed area beyond national jurisdiction</u>
PROVISION XIV	Access to and from the sea-bed area
Item 9.2.4	<u>Participation in the international régime, including the machinery and the equitable sharing in the benefits of the area</u>
PROVISION XV	Representation
PROVISION XVI	Participation in decision-making

- Item 9.3 Particular interests and needs of developing land-locked countries in the international régime
- Item 9.4 Rights and interests of land-locked countries in regard to living resources of the sea
- PROVISION XVII Living resources
- PROVISION XVIII Transfer of rights and technical and financial assistance

Item 9: Land-locked countries

PROVISION I

Definitions

For the purpose of this Convention:

"Land-locked State" means any State which has no seacoast;

The term "transit State" means any State, with or without a seacoast, situated between a land-locked State and the sea, through whose territory the land-locked State shall have access to and from the sea;

The term "traffic in transit" means transit of persons, baggage, goods and means of transport across the territory of one or more transit States, when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk or change in the mode of transport is only a portion of a complete journey which begins or terminates within the territory of the land-locked State.

9.1 General principles of the law of the sea concerning the land-locked countries

PROVISION II

The existence and the nature of the right of land-locked States to free access to and from the sea derive from the application of the principles of the freedom of the sea and the designation of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, as well as the resources of that area, as the common heritage of mankind.

9.2 Rights and interests of land-locked countries

Same as provision VII, formula D, paragraph 2 of Informal Working Paper No. 4/Rev.2.

9.2.1 Free access to and from the sea: freedom of transit, means and facilities for transport and communications

PROVISION III

Formula A

The right of land-locked States to free access to and from the sea is one of the basic principles of the law of the sea and forms an integral part of the principles of international law.

In order to enjoy the freedom of the seas and to participate in the exploration and exploitation of the sea-bed and its resources on equal terms with coastal States, land-locked States, irrespective of the origin and characteristics of their land-locked conditions, shall have the right of free access to and from the sea in accordance with the provisions of this Convention.

The right of free access to and from the sea of land-locked States shall be the concern of the international community as a whole and the exercise of such right shall not depend exclusively on the transit States.

Since free transit of land-locked States forms part of their right of free access to and from the sea which belongs to them in view of their special geographical position, reciprocity shall not be a condition of free transit of land-locked States required by transit States but may be agreed between the parties concerned.

Formula B

Each land-locked State shall enjoy free access to and from the sea.

Neighbouring transit States shall accord, on a basis of reciprocity, free transit through their territories of persons and goods of land-locked States by all possible means of transportation and communication. The modalities of the exercise of free transit shall be settled between the land-locked States and the neighbouring transit States by means of bilateral or regional agreements.

Land-locked States shall have the freedom to use one or more of the alternative routes or means of transport, as agreed with the transit States concerned, for purposes of access to and from the sea.

PROVISION IV

Formula A

The provisions of this Convention which govern the right of free access of land-locked States to and from the sea shall not abrogate existing special agreements between two or more States concerning the matters which are regulated in this Convention, nor shall they raise an obstacle as regards the conclusion of such agreements in the future.

In case such existing agreements provide less favourable conditions than those contained in this Convention, the States concerned undertake that they shall bring them in accord with the present provisions at the earliest occasion.

The provisions contained in the preceding paragraph shall not affect existing bilateral or multilateral agreements relating to air transport.

Formula B

Same as formula A, but with the deletion of the third paragraph thereof.

PROVISION V

Provisions of this Convention, as well as special agreements which regulate the exercise of the right of free access to and from the sea and the area of the sea-bed, establishing rights and facilities on account of the special geographical position of land-locked States, are excluded from the application of the most-favoured-nation clause.

PROVISION VI

Formula A

Transit States shall accord free and unrestricted transit for traffic in transit of land-locked States, without discrimination among them to and from the sea by all means of transport and communication, in accordance with the provisions of this Convention.

Formula B

In order to have access to and from the international sea area for trade and other peaceful purposes, land-locked States have the right to pass through the territory, territorial sea and other waters of adjacent coastal States. Coastal States and adjacent land-locked States shall, through consultations on the basis of equality and mutual respect for sovereignty, conclude bilateral or regional agreements on the relevant matters.

Formula C

Same as provision III, formula B, second paragraph.

9.2.2 Equality of treatment in the ports of transit States

PROVISION VII

Formula A

Vessels flying the flag of a land-locked State shall have the right to use maritime ports.

Vessels of land-locked States are entitled to the most-favoured treatment and shall under no circumstances receive a treatment less favourable than that accorded to vessels of coastal States as regards access to and exit from the maritime ports.

The use of these ports, facilities, installations and equipments of any kind shall be provided under the same conditions as for coastal States.

Formula B

For the purposes provided for in this article, coastal States shall guarantee neighbouring land-locked States free passage through their territories, as well as equal treatment as regards entry into and use of ports, in accordance with internal legislation and any relevant agreements they may conclude.

PROVISION VIII

Traffic in transit shall not be subject to any customs duties, taxes or other charges except charges levied for specific services rendered in connexion with such traffic.

/...

If the port installations and equipment or the means of transport and communication or both existing in a transit State are primarily used by one or more land-locked States, tariffs, fees or other charges for services rendered shall be subject to agreement between the States concerned.

Means of transport in transit used by the land-locked State shall not be subject to taxes, tariffs or charges higher than those levied for the use of means of transport of the transit State.

PROVISION IX

For convenience of traffic in transit, free zones and/or other facilities may be provided at the ports of entry and exit in the transit States, by agreement between those States and the land-locked States.

Such zones shall be exempted from the customs regulations of the coastal States. They remain, however, subject to the jurisdiction of those States with regard to police and public health regulations.

PROVISION X

Land-locked States shall have the right to appoint customs officials of their own in the ports of transit or free zones, empowered in accordance with the practice of States, to arrange the berthing of vessels whose cargo is bound for or coming from the land-locked State and to make arrangements for and supervise loading and unloading operations for such vessels as well as documentation and other necessary services for the speedy and smooth movement of traffic in transit.

PROVISION XI

Transit States shall provide adequate means of transport, storage and handling facilities at the points of entry and exit, and at intermediate stages, for the smooth movement of traffic in transit.

PROVISION XII

When means of transport and communication in the transit States are insufficient to give effect to the rights of land-locked States of free access to and from the sea or when the aforesaid means of transport and communication or the port installations and equipment are inadequate or may be improved in any respect, the land-locked States shall have the right to construct, modify or improve them in agreement with the transit State or States concerned.

PROVISION XIII

Except in cases of force majeure all measures shall be taken by transit States to avoid delays in or restrictions on traffic in transit.

Should delays or other difficulties occur in traffic in transit, the competent

-8-

authorities of the transit State or States and of land-locked States shall co-operate towards their expeditious elimination.

9.2.3 Free access to the international sea-bed area beyond national jurisdiction

PROVISION XIV

Land-locked States shall have the right of free access to and from the area of the sea-bed in order to enable them to participate in the exploration and exploitation of the area and its resources and to derive benefits therefrom in accordance with the provisions of this Convention.

For this purpose the land-locked States shall have the right to use all means and facilities provided for in this Convention with regard to traffic in transit.

9.2.4 Participation in the international régime, including the machinery and the equitable sharing in the benefits of the area

PROVISION XV

In any organ of the international sea-bed machinery in which not all member States will be represented, in particular in its Council, there shall be an adequate and proportionate number of land-locked States, both developing and developed.

PROVISION XVI

In any organ of the machinery, decisions on questions of substance shall be made with due regard to the special needs and problems of land-locked States.

On questions of substance which affect the interests of land-locked States, decisions shall be made with their participation.

9.3 Particular interests and needs of developing land-locked countries in the international régime

9.4 Rights and interests of land-locked countries in regard to living resources of the sea

PROVISION XVII

Formula A

Land-locked ... States shall have the right to participate in the exploration and exploitation of the living resources of the ... zone of neighbouring coastal States on an equal and non-discriminatory basis. For the purpose of facilitating the orderly development and the rational exploitation of the living resources of the particular zones, the States concerned may decide upon appropriate arrangements to regulate the exploitation of the resources in those zones.

Formula B

Nationals of a developing land-locked State shall enjoy the privilege of fishing in the neighbouring area of the exclusive economic zone of the adjoining coastal State on the basis of equality with the nationals of that State. The modalities of the enjoyment of this privilege and the area to which they relate shall be settled by agreement between the coastal State and the land-locked State concerned. This privilege will be available to the nationals of the land-locked State concerned and cannot be transferred to third parties by lease or licence, by establishing joint collaboration ventures, or by any other arrangement. Jurisdiction and control over the conservation, development and management of the resources of the specified area shall lie with the coastal State in whose zone that area is located.

Formula C

In any region where there are land-locked States, the nationals of such States shall have the right to exploit the renewable resources within the economic zones or patrimonial seas of the region for the purpose of fostering the development of their fishing industry and satisfying the nutritional needs of such populations.

Formula D

Coastal States shall, through bilateral or subregional agreements, as the case may require, in which the interests of all parties are given fair consideration, accord to States having no seacoast which are their neighbours or which belong to the same subregion preferential treatment over third States with regard to fishing rights in that area of their territorial sea which is not reserved exclusively for their nationals. Such preferential treatment shall be reserved for national enterprises of the States having no seacoast which operate in the area exclusively with ships flying the flag of those States and whose catch is intended for domestic or industrial consumption in the said States, or for national enterprises of the States having no seacoast which are associated with national enterprises of the coastal States.

Formula E

... agreement shall be reached with States having no seacoast on an equitable régime for the exercise in the maritime area of fishing rights which shall be preferential in relation to third States. The said preferential rights shall be granted provided that the enterprises of the State which wishes to exploit the resources in question are effectively controlled by capital and nationals of that State and that the ships which operate in the area fly the flag of that State.

PROVISION XVIII

Land-locked ... States shall not transfer their rights under ... provision VII, Formula D, paragraphs 1 and 2 of Informal Working Paper No. 4/Rev.2 to third States, except when otherwise agreed upon by the States concerned.

The provisions of paragraph 1 shall, however, not preclude land-locked ... States from obtaining technical or financial assistance from third States, or appropriate international organizations, for the purpose of enabling them to develop viable industries of their own.